

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

GERALD DIX

Plaintiff,

v.

CANADIAN NATIONAL RY, UNION  
PACIFIC RR, METRA RR,  
and the U.S. EQUAL  
EMPLOYMENT OPPORTUNITY  
COMMISSION, an agency of the United  
States of America

Defendants.

08CV4269

JUDGE NORGLÉ

MAGISTRATE JUDGE VALDEZ

**FILED**

Aug 20, 2008

AUG 20 2008

## MOTION TO REMAND

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Gerald Dix, plaintiff in the above entitled cause, moves for an order of this court remanding this cause to the state court pursuant to 28 U.S.C. § 1447(c) and, in support thereof, alleges as follows:

1. Defendant EEOC filed a petition for removal of this action from the Circuit Court of Cook County, Illinois on July 28, 2008.
2. In its petition for removal, EEOC stated that this action was removable to this court under the provisions of 28 U.S.C. § 1442.
3. EEOC's petition includes defects in the removal procedure which are the proper bases for remand.
4. Specifically, in its Notice of Removal, the EEOC failed to affirmatively state that it was acting "under color of such office" by direct averments which must exclude the possibility that any of its alleged acts was not justified by its federal duties.
5. In its petition for removal, the EEOC failed to even "simply state" that it was acting "under

color of such office" when it committed the malicious and wrongful acts that directly or proximately caused the injuries to the Plaintiff as outlined in his original complaint.

6. Furthermore, the EEOC waived its right to removal by conspiring with one of the co-Defendants by permitting the state court to proceed with the Plaintiff's lawsuit after the EEOC filed its Notice of Removal with the Clerk of the Circuit Court for Cook County. The EEOC had full knowledge that the Plaintiff's lawsuit would proceed in the state court despite the Notice of Removal issued earlier (See Dix Declaration par. 2).
7. The EEOC sought to benefit from a frivolous and felonious Motion to Dismiss filed by the attorney for the Canadian National Railway (CN). Specifically, CN is attempting to defraud the state court into believing that two of its employees, Donald Sutton and Kelvin Stovall were not employed by CN but rather were employees of Chicago Central and Pacific Railroad Company (See Exhibit 1 and Dix Declaration Exhibit B).
8. The EEOC's employment "dictates" imposed upon Canadian National Railway as well as Illinois Central Railroad form the basis for the Plaintiff's cause of action against the defendant EEOC. The EEOC and the CN are still attempting to conceal their involvement in the hiring and promotion of unqualified, untrained and drug-addicted people for the purpose of operating locomotives in the County of Cook, Illinois in the state court.
9. On August 4, 2008, the Plaintiff appeared before Cook County Judge Lawrence O'Gara to defend his lawsuit against dismissal by the attorney for CN and Metra. Dix promptly notified Judge O'Gara that he received the EEOC's Notice of Removal and that Dix had confirmed that the case had been removed to the federal court and that the Judge Norgle was the presiding judge (See Dix Declaration par. 3)
10. Despite Dix's objection to the proceeding, Judge O'Gara and Andrew L. Hughes, the

attorney for CN and Metra with all of their years of experience practicing law insisted that the proceeding continue in the state court (See Dix Declaration par. 4).

11. On August 4, 2008, Judge O'Gara set a briefing schedule for the two frivolous motions filed by the attorney for CN and Metra requiring the Plaintiff to respond to the Defendant's Motions by September 1, 2008. Currently the Plaintiff is carrying the burden of prosecuting the same civil action in both the federal and state court to the unfair advantage of CN and the EEOC.

12. Plaintiff further alleges that there are no separate and independent claims or causes of action that would be removable if sued on alone.

13. This action was therefore improperly removed to this court and should be remanded to the Circuit Court of Cook County, Illinois.

WHEREFORE, plaintiff prays that this court enter an order remanding this cause to the Circuit Court of Cook County, Illinois.

Respectfully submitted,

Gerald Dix

Gerald Dix, pro se  
9432 S Massasoit  
Oak Lawn, IL 60453  
(708) 423-3946  
gdix3@hotmail.com

DATED: 08/20/08

CERTIFICATE OF SERVICE

I certify that the foregoing was served on the following parties on August 20, 2008


by United States Mail, proper postage affixed, and addressed as follows:

Daniel R. LaFave  
Union Pacific Railroad Company  
101 North Wacker Drive, Room 1920  
Chicago, IL 60606

Mona Papillon  
Attorneys for US EEOC  
1801 L Street, N.W.  
Washington D.C. 20507

Attorney for Canadian National Railway and Metra:

Michael O. Vates  
MacCabe & McGuire  
77 West Wacker Drive, Suite 3333  
Chicago, Illinois 60601

  
Gerald Dix, Plaintiff pro se

FIRM CODE. 30800

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT, FIRST DISTRICT

GERALD DIX,

Plaintiff,

v.

Case No. 2008 M1 301898

CANADIAN NATIONAL RAILWAY,  
UNION PACIFIC RAILROAD, METRA  
RAILROAD, EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Defendants.

FILED-48  
08 JUL 24 PM 2:22  
CLERK

**DEFENDANT CANADIAN NATIONAL'S MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Defendant, CANADIAN NATIONAL RAILWAY COMPANY, by its attorneys, MacCabe & McGuire, pursuant to 735 ILCS 5/2-619 (9) for its motion to dismiss with prejudice plaintiff's complaint states as follows:

1. This matter arises from an incident on March 7, 2007 involving an alleged train collision in Chicago, Illinois. Plaintiff has filed suit against Canadian National Railway Company ("CN") alleging that it carelessly and negligently operated a UP locomotive. See plaintiff's complaint paragraph 8 (a-f) as Exhibit 1.
2. The train crew of the locomotive at issue were Mr. Donald Sutton and Mr. Kelvin Stovall. The Chicago Central and Pacific Railroad Company was the entity which employed the train crew. Mr. Sutton and Mr. Stovall were not employees of the CN.
3. The CN had no involvement with this incident or the allegations in plaintiff's complaint. See Affidavit of Donald Corp as Exhibit 2.
4. Moreover, plaintiff has not perfected service on the Canadian National, which further justifies dismissal.

Exhibit 1

WHEREFORE, defendant CANADIAN NATIONAL RAILWAY COMPANY prays that  
this Honorable Court dismiss plaintiff's complaint with prejudice.

MacCabe & McGuire

By:



Michael O. Vates  
Attorneys For Defendant

Michael O. Vates  
MacCabe & McGuire  
77 West Wacker Drive, Suite 3333  
Chicago, Illinois 60601  
Phone: 312-357-2600  
M:\Red32-100-236\NOTICE OF MOTION - Metra.doc

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

GERALD DIX	)	
Plaintiff,	)	
v.	)	
	)	
CANADIAN NATIONAL RY, UNION	)	08CV4269
PACIFIC RR, METRA RR,	)	JUDGE NORGLÉ
and the U.S. EQUAL	)	MAGISTRATE JUDGE VALDEZ
EMPLOYMENT OPPORTUNITY	)	
COMMISSION, an agency of the United	)	
States of America	)	
	)	
Defendants.	)	

DECLARATION OF GERALD DIX

I, Gerald Dix, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a citizen of the United States and a resident of the State of Illinois. I am the Plaintiff in the above entitled case.
2. On July 30, 2008, I notified the attorney of record for the EEOC, Mona Papillon by facsimile at 1-202-663-4639 of the state proceeding that would occur on August 4, 2008 in room 1501 of the Daley Center at 10:30 am. A copy of the facsimile I sent to the EEOC is attached to this Declaration as Exhibit A.
3. On August 4, 2008, I appeared before Cook County Judge Lawrence O'Gara to defend my lawsuit (case number 2008 M1 301898) against dismissal by the attorney for CN and Metra. I promptly notified Judge O'Gara that I received the EEOC's Notice of Removal and that I had confirmed that the case had been removed to the federal court and that the Judge Norgle was the presiding judge.
4. Despite my objection to the state court proceeding on August 4, 2008, Judge O'Gara and Andrew L. Hughes, the attorney for CN and Metra insisted on establishing a briefing

schedule for two Motions to Dismiss filed by Michael O. Vates on behalf of CN and Metra in the state court.

5. I am currently engaging in discovery procedure and I am bound by Illinois Rules of Jurisprudence. I have obtained an Affidavit by Alice J. Graff from the Clerk of the Circuit Court for Cook County in the Sixth District located at 16501 South Kedzie Parkway in Markham, Illinois which establishes the fact that Donald Sutton was an employee of Canadian National contrary to the false allegations made by Canadian National and its attorneys, Michael O. Vates and Andrew L. Hughes. A copy of the Affidavit I obtained from the Clerk of the Circuit Court for Cook County is attached to this Declaration as Exhibit B.

Executed on: 08/20/08

Gerald Dix  
Gerald Dix



**To:** MacCabe & McGuire**From:** Gerald Dix**Fax:** 312-357-0317**Pages:** 5**Phone:** 312-357-2600**Date:** 7/30/2008**Re:** Dix v. Canadian National Railway, *et al***CC:** EEOC, Union Pacific

Case No. 2008 MI 301898

Aug 4, 2008 Motion

**Dear Defendants:**

Per my discussion with counsel for Metra and CN on July 29, 2008, I will appear before the presiding judge in room 1501 of the Daley Center at 10:30 am on August 4, 2008. At that time I will discuss suitable methods for dealing with your two frivolous motions. As to Don Corp's false allegation that Donald Sutton and Kelvin Stovall were not employees of the CN, I will provide the Court with information that CN presented Mr. Sutton and Mr. Stovall as their own employees to the NTSB. I have copies of the "Personal Work Record" for all CN crew members for CN train No. R95491 which shows that they are employees of CN (a copy of which is included with this fax). I would appreciate it if you would provide the originals of these "Personal Work Records" so the judge can see the unmarked versions. I have also included a copy of the first page of the US DOT Accident Investigation Report HQ-2007-11 which indicates that the name of Railroad operating train #1 was in fact Canadian National-North America with an alphabetic code of CN. I should also remind you that any locomotive operated by employees of the "Chicago Central and Pacific Railroad Company" must be identified by the code of "CC" instead of "CN". Your motions seeking to avoid responsibilities for your reckless disregard for public safety is only interpreted as a furtive ploy by you and the other defendants; for this reason, I intend to seek sanctions against all of the defendants.

Sincerely,

Gerald Dix

email: gdix3@hotmail.com

**Exhibit A**

July 30, 2008



# PERSONAL WORK RECORD

PERSONAL WORK RECORD FOR:  
Employee: SUTTON, D R

Empl. No.: [REDACTED]

Current Status: A

PIN: [REDACTED]

D.O.B.: [REDACTED]

Hired Date: 03/22/1994

Department: 7

Cert: ENGR

Work Location: HAWTHORNE, IL

Home: [REDACTED]

Last Medical:

Results: ( )

Last Rules Exam: 02/15/2001

Results: ( P )

Remedial Training: 10/30/2002

The Following Incidents Have Been Entered On This Individual

Total of Demerits: 0

0 Points

Total of Suspensions: 0

0 Days

Corrective Interviews: 0

Written Reprimands: 0

Discharges: 0

The Following Letters Have Been Entered On This Individual

Training: 5

Safety: 1

Company Issue: 3

Metric: 0

Caution: 2

Foreman Discipline: 0

Investigations: 6

Engineer Qualifications/Testing: 0

Miscellaneous: 5

Remedial Training: 0

Medicals: 0

Leaves of Absence: 0

Furloughs: 0

Decertified: 0

Total Time Out Of Service Due To:

Injury: 0

Furlough/LOA: 0

TOTAL: 0

Total days restricted duty: 0

INJURIES: 2

\*\* Lost Time: 0

\*\* Reportable: 0

\*\* Lite Duty: 0

July 30, 2008



## PERSONAL WORK RECORD

## PERSONAL WORK RECORD FOR:

Employee: STOVALL, K

Empl. No:

PIN:

Current Status: A

D.O.B:

Hired Date: 02/13/2008

Department: TRANS

Cart: CONDR

Work Location: HARVEY, IL

Home: [REDACTED]

Last Medical: 02/02/2008

Results: (P)

Last Rules Exam: 12/01/2008

Results: (P)

Remedial Training:

## The Following Incidents Have Been Entered On This Individual

Total of Demerits: 0

0 Points

Total of Suspensions: 0

0 Days

Corrective Interviews: 0

Written Reprimands: 0

Discharges: 0

## The Following Letters Have Been Entered On This Individual

Training: 2

Company Issue: 1

Caution: 1

Investigations: 1

Miscellaneous: 0

Medicals: 0

Furloughs: 0

Safety: 0

Merit: 0

Foreman Discipline: 0

Engineer Qualifications/Testing: 0

Remedial Training: 0

Leaves of Absence: 0

Decertified: 0

## Total Time Out Of Service Due To:

Injury: 0

Furlough/LoA: 0

TOTAL: 0

Total days restricted duty: 0

INJURIES: 0

\*\* Lost Time: 0

\*\* Reportable: 0

\*\* Lite Duty: 0

July 30, 2008



## PERSONAL WORK RECORD

## PERSONAL WORK RECORD FOR:

Employee: LYONS, C D

Empl. No.:

Current Status: A

PIN: [REDACTED]

D.O.B.: [REDACTED]

Hired Date: 02/12/2007

Department: A

Craft: CONDR

Home: [REDACTED]

Work Location: HAWTHORNE, IL

Last Medical: 02/21/2007

Results: (R)

Last Rules Exam: 02/16/2007

Results: (P)

Remedial Training:

## The Following Incidents Have Been Entered On This Individual

Total of Demerits: 0

0 Points

Total of Suspensions: 0

0 Days

Corrective Interviews: 0

Written Reprimands: 0

Discharges: 0

## The Following Letters Have Been Entered On This Individual

Training: 1

Safety: 0

Company Issue: 0

Merit: 0

Caution: 0

Foreman Discipline: 0

Investigations: 0

Engineer Qualifications/Testing: 0

Miscellaneous: 0

Remedial Training: 0

Medicals: 1

Leaves of Absence: 0

Furloughs: 0

Decertified: 0

## Total Time Out Of Service Due To:

Injury: 0

Furlough/LoFA: 0

TOTAL: 0

Total days restricted duty: 0

## INJURIES: 0

\*\* Lost Time: 0

\*\* Reportable: 0

\*\* Lite Duty: 0

July 30, 2008

DEPARTMENT OF TRANSPORTATION FEDERAL RAILROAD ADMINISTRATION		FACTUAL RAILROAD ACCIDENT REPORT		FRA File # HO-2007-11	
1. Name of Railroad Operating Train #1 Canadian National - North America (CN)		1a. Alphabetic Code CN		1b. Railroad Accident/Incident No. 448474	
2. Name of Railroad Operating Train #2 Norfolk Southern Regional Commuter Rail Corp. (NIRC)		2a. Alphabetic Code NIRC		2b. Railroad Accident/Incident No. SWAB009	
3. Name of Railroad Operating Train #3 N/A		3a. Alphabetic Code N/A		3b. Railroad Accident/Incident No. N/A	
4. Name of Railroad Responsible for Track Maintenance Amtrak (ATK)		4a. Alphabetic Code ATK		4b. Railroad Accident/Incident No. H07734	
5. U.S. DOT AAR Grade Crossing Identification Number		6. Date of Accident/Incident Month 03 Day 02 Year 2007		7. Time of Accident/Incident 09:56:00 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	
8. Type of Accident/Incident (single entry in code box)		9. Other impacts		10. Other (describe in narrative)	
1. Derailment 2. Head-on collision 3. Rear-end collision 4. Side collision 5. Raking collision 6. Broken train collision 7. Hwy-rail crossing 8. RR grade crossing 9. Obstruction 10. Explosion/detonation 11. Fire/violent rupture 12. Other impacts		13. Other impacts		14. Other (describe in narrative)	
11. Cars Carrying HAZMAT 0		12. HAZMAT Cars Damaged/Destroyed N/A		13. Other (describe in narrative)	
14. Nearest City/Town CHICAGO		15. Milepost (to nearest tenth) 1.4		16. State Abbrev Code IL	
17. County COOK		18. Type of Track 1. Main 2. Sidling 3. Yard 4. Industry		19. Type of Track 1. Main 2. Sidling 3. Yard 4. Industry	
20. Temperature (F) (specify minimum) 20 F		21. Visibility (single entry) Code 1. Dawn 2. Day 3. Dusk 4. Dark A		22. Weather (single entry) Code 1. Clear 2. Rain 3. Snow 4. Fog 5. Ice 6. Other 2	
23. Track Name/Number MAIN TRACK NO 4		24. PRA Track Class (1-9, X) 2		25. Time Table Direction 1. North 2. South 3. East 4. West 1	
OPERATING TRAIN #1					
26. Type of Equipment 1. Freight train 2. Passenger train 3. Single car 4. Light locomotive 5. Commuter train 6. Cut of cars 7. Maintenance car		27. Was Equipment Antecedent? 1. Yes 2. No 2		28. Train Number/Symbol R9541 07	
29. Speed (recorded speed, if available) Code R - Recorded E - Estimated 14 MPH R		30. Method(s) of Operation (enter code(s) that apply) a. ATCS b. Automatic block c. Special instructions d. Auto train control e. Current of traffic f. Other than main track g. Auto train stop h. Positive train control i. Other (Specify in narrative) j. Track warrant control k. Other traffic control l. Yard limits m. Other (Specify in narrative) Code(s) N/A N/A N/A N/A		31. Remotely Controlled Locomotive? 0 = Not a remotely controlled locomotive 1 = Remote control portable 2 = Remote control power 3 = Remote control transmitter - more than one remote control transmitter a	
32. Principal Car/Unit a. Initial and Number UP6022 b. Position in Train 1 c. Lead(s) (yes/no) N/A		33. If railroad employee(s) tested for drug/alcohol use, enter the number that were positive in the appropriate box. Alcohol Drug 00 1		34. Was this incident transporting passengers? (Y/N) N	
35. Locomotive Units a. Head End b. Mid Train c. Remote d. Manual e. Remote		36. Cars a. Freight b. Pass. c. Freight d. Pass. e. Caboose		37. Equipment Damage This consist 10000 38. Track, Signal, Way, & Structure Damage 1000 39. Primary Cause Code H017 40. Contributing Cause Code N/A	
41. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		42. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		43. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote	
44. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		45. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		46. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote	
47. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		48. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		49. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote	
49. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		50. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		51. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote	
52. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		53. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote		54. Engine/Operator a. Head End b. Mid Train c. Remote d. Manual e. Remote	
OPERATING TRAIN #2					
55. Type of Equipment 1. Freight train 2. Passenger train 3. Single car 4. Light locomotive 5. Commuter train 6. Cut of cars 7. Maintenance car		56. Was Equipment Antecedent? 1. Yes 2. No 1		57. Train Number/Symbol SWA R29	
58. Speed (recorded speed, if available) Code R - Recorded E - Estimated 0 MPH R		59. Method(s) of Operation (enter code(s) that apply) a. ATCS b. Automatic block c. Special instructions d. Auto train control e. Current of traffic f. Other than main track g. Auto train stop h. Positive train control i. Other (Specify in narrative) j. Track warrant control k. Other traffic control l. Yard limits m. Other (Specify in narrative) Code(s) N/A N/A N/A N/A		60. Remotely Controlled Locomotive? 0 = Not a remotely controlled locomotive 1 = Remote control portable 2 = Remote control power 3 = Remote control transmitter - more than one remote control transmitter a	

Form FRA F 6180.33 (11/2006)

Page 1 of 8

3115,

(Rev. 4/15/99) CCG 0050 B

Date: September 22, 2004Case Number: 04 M6 1951

## INTERROGATORIES/ANSWER TO WAGE DEDUCTION PROCEEDINGS

Employer/Agent: CANADIAN NATIONAL RAILROAD, certifies under penalty of perjury that the following Answer is true and correct to the best of his/her knowledge and belief concerning the property of the judgment debtor.Debtor Name: DONALD SUTTON Soc. Sec. No. 319-52-9034Do you pay monies to the judgment debtor listed above? ☒ Yes ☐ No

State whether any funds paid to the debtor are for disability, retirement, or are in any other way exempt or subject to other Court Order: \_\_\_\_\_

One Pay Period equals: 10 day(s) 2 week(s) \_\_\_\_\_ month(s)

## CALCULATION TO DETERMINE AMOUNT OF WITHHOLDING:

(A) Gross Wages minus mandatory contributions to pension or retirement plans is	(A) <u>4282.30</u>
(B) <u>METHOD I</u> 15% of (A)	(B) <u>642.35</u>
<u>METHOD II</u>	
(C) Enter Total FICA, State and Federal Tax and Medicare	(C) <u>1084.71</u>
(D) Subtract (C) from (A)	(D) <u>3197.59</u>
(E) Enter 45 x Current Federal Minimum Hourly Wage per pay period.	(E) <u>231.75</u>
(F) Subtract (E) from (D)	(F) <u>2965.84</u>
(G) Enter the lesser of Line (b) or (f)	(G) <u>642.35</u>
(H) Enter Child Support or other Court Ordered Deduction	(H) _____
(I) Subtract (H) from (G)	(G) _____
(J) Subtract Employer's Statutory Fee (§ 5/12 - 814)	(J) <u>12.00</u>
(K) Amount to be applied to judgment	(K) <u>630.35</u>

Line I is the amount to be withheld from employee's paycheck as of the date of service of Summons and not disbursed until further order of Court.

Signature of Employer: Alice J. Bruff 9/20/04

## INSTRUCTIONS

1. Mail a copy of this Answer to the Court, mail to attorney for Plaintiff, and give a copy to the Defendant. If filing in Dist. 1 Municipal you may fax your Answer to 312-603-6522.
2. You will receive a copy of a Court Order by fax or mail instructing you how to proceed and where to send deducted funds.

Employer/Agent:

Agent Name: Alice J. BruffEmployer Name: CANADIAN NATIONAL RAILROADAddress: 17641 S. ASHLAND AVE  
Homewood, IL 60430Phone: 708-332-3043Fax: 708-332-3854

Clerk of the Circuit Court

COOK

County Courthouse

16501 S. KEDZIE PARKWAY  
StreetMARKHAM  
CityIL  
State60426  
Zip

NOTE: A copy of this Answer should be mailed to the Court, Attorney for Plaintiff or Judgment Creditor and to the Defendant.

DOROTHY BROWN CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Exhibit B